

*Serial No.: 10/529,326
Atty. Docket No.: 119508-00282*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. National Stage Appln. of)	
)	
Lutz Axel MAY)	Art Unit: Unassigned
)	
Serial No.: 10/529,326)	Examiner: Unassigned
)	
Filing Date: March 25, 2005)	Confirmation No.: 8656
)	
I.A. No. PCT/EP03/10634)	Attorney Docket No. 119508-00282
)	
I.A. Filing Date: September 24, 2003)	
)	
Priority Date: September 25, 2002)	
)	
For: TORQUE SIGNAL TRANSMISSION)	

THIRD RENEWED PETITION UNDER 37 C.F.R. § 1.47(b)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The owner of the above-cited patent application, Abas, Inc., a wholly-owned subsidiary of Methode Electronics, Inc., (hereinafter “Rule 1.47(b) applicant”) respectfully requests reconsideration of the dismissal of its previously submitted original Petition Under 37 C.F.R. §1.47(b) (which requested that the above-captioned patent application be accepted without the signature of the inventor, Lutz Axel May), and the dismissal of its previously submitted first and second renewed Petitions Under 37 C.F.R. §1.47(b). The Rule 1.47(b) applicant requests reconsideration on the merits based on the following:

- This Third Renewed Petition, including the Exhibit submitted herewith;
- The Rule 1.47(b) applicant’s original and renewed Petitions and referenced enclosures, exhibits, and other papers submitted therewith.

This Third Renewed Petition contains additional information not contained in the previously-submitted Petitions.

*Serial No.: 10/529,326
Atty. Docket No.: 119508-00282*

A. Background

The Decision on Petition dated April 2, 2007, states that six items must be satisfied before a Petition Under 37 C.F.R. §1.47(b) may be granted. With regard to the original and renewed Petitions, the Patent Office found that items (1), (3), (4), (5), and (6) have been satisfied, but that item (2) (i.e., “Factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort”) has not been satisfied.

In the Decision on Petition dated August 20, 2007, the Patent Office states that the Declaration of Dr. Alexander Straus, dated May 30, 2007,

- Does not state whether the assertion that the application papers sent to Lutz May is made on the basis of personal recollection, or whether the facts recounted are supported by documentary records made contemporaneously with the mailing of the papers to Lutz May;
- Is not clear as to whether the referenced “application papers” refer to a complete copy of the application in question; and
- Is not clear as to whether Lutz May was presented with an oath or declaration document directed to this specific application.

B. Item (2): Factual Proof That The Inventor Refuses To Execute The Application Or Cannot Be Reached After Diligent Effort

In the Rule 1.47(b) applicant’s original Petition, a Declaration of Alexander Straus was provided that indicated that Lutz May had been contacted on several occasions and requested to execute the application papers in connection with this and other patent applications. A certified English translation of the various letters and delivery certificates concerning the aforementioned contacts with Lutz May have previously been submitted. In particular, two letters, both dated August 24, 2005, from Alexander Straus to Lutz May’s attorney were provided in which was indicated that Dr. Straus forwarded the application papers and Declaration/Power of Attorney form to Lutz May. Also included was a Courier Ticket showing that the letters were delivered on August 24, 2005, and a confirmation letter from Eurokurier, dated August 31, 2005, which is the company that provided the courier service for Dr. Straus.

Serial No.: 10/529,326
Atty. Docket No.: 119508-00282

In the Rule 1.47(b) applicant's Second Renewed Petition dated June 4, 2007, a Declaration of Alexander Straus was provided stating that the application papers for the present application were in fact sent to Lutz May, but was inadvertently not listed on the letters. The Declaration states that "I caused to be delivered...the application papers." Thus, Dr. Straus' assertion that the application papers for the present application were in fact sent to Lutz May is made on the basis of his personal recollection. It is also based on documentary records (i.e., the August 24, 2005, transmittal letter addressed to Lutz May), which was made contemporaneously with the mailing of the application papers to Lutz May. The Rule 1.47(b) applicant respectfully submits that Dr. Straus' declaration is based on personal recollections and on documentary records prepared contemporaneously with the mailing of the application papers.

As the Patent Office points out, Dr. Straus' Declarations do not explicitly state that the referenced "application papers" refer to a "complete copy" of the application in question. Attached as Exhibit 5 to the Renewed Petition Under 37 C.F.R. § 1.47(b) dated December 26, 2006 is a copy of the application papers that were sent to Dr. Straus to be forwarded to Lutz May with the August 24, 2005, transmittal letter. The Rule 1.47(b) applicant respectfully submits that the papers in Exhibit 5 are a "complete copy" of the application papers, and respectfully invites the Patent Office to review the papers again in connection with its review of this renewed Petition. The application papers in Exhibit 5 include a combined declaration for patent application and power of attorney form that is directed to this application.

For the above reasons, and the reasons set forth in the original and First and Second Renewed Petitions, the Rule 1.47(b) applicant respectfully submits that factual proof exists that a *bona fide* attempt was made to present the application papers to Lutz May for his review and signature, and that he refuses to execute those papers.

C. Item (5): Proof Of Proprietary Interest In The Application

Although the Patent Office did not raise an issue with regard to item (5), the facts establishing that Lutz May made the present invention during the time and scope of his employment by Fast Technology are set forth in the Declaration of Steven Harders attached hereto as Exhibit 1. As indicated in the Declaration, Lutz May entered into an employment agreement with Fast Technology on September 1, 2000. Decl. of S. Harders at ¶¶ 4a & b.

*Serial No.: 10/529,326
Atty. Docket No.: 119508-00282*

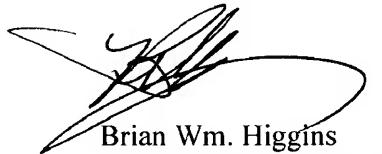
The above-captioned application has, as indicated in the caption above, a priority date of September 25, 2002. Accordingly, on information and belief, Lutz May was an employee of Fast Technology at the time he made the present invention on or about September 25, 2002.

D. Conclusion

In the event there are any questions relating to this Third Renewed Petition or the other papers submitted concurrently herewith, it would be appreciated if the Patent Office would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Any fee due is authorized above. Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (119508-00282).

Respectfully submitted,



Brian Wm. Higgins
Registration No. 48,443

BLANK ROME LLP
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
Telephone: (202) 772-5800
Customer No. 27557

Date: February 20, 2008

Serial No.: 10/529,326
Atty. Docket No.: 119508-00282

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. National Stage Appln. of)
Lutz Axel MAY)
)

DECLARATION OF STEPHEN HARDERS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Stephen Harders, hereby declare:

1. I am a citizen of the United States and am over 18 years old. I am the Assistant Secretary of Abas, Incorporated, which is a Delaware corporation having a principal place of business at 7401 W. Wilson Avenue, Chicago, Illinois 60706.

2. I am providing this Declaration in support of a Petition Under Rule 1.47(b) that is being submitted to the U.S. Patent & Trademark Office (PTO) in connection with one or more patent applications.

3. Attached hereto as Attachment I is, on information and belief, a true and correct copy of a document entitled "Arbeitsvertrag," which is an employment agreement concerning the appointment of a "Prokurist" for Fast Technology GmbH. On information and belief, a *prokurist* is a person who can legally bind a company; his name and function are entered in the commercial register. I understand that non-relevant portions of the enclosed *Arbeitsvertrag* have been redacted by Abas, Inc.'s attorneys, as indicated on the document by the word "Redacted."

4. I am skilled in the German language. I translated portions of the agreement contained in Attachment I from German to English on November 19, 2007, as follows:

DECLARATION OF STEPHEN HARDERS

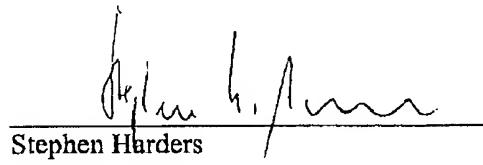
a. Article 1, paragraph 1, states: "Mr May is being employed as Prokurist with effect of September 1, 2000. He receives the title 'Chief Technical Officer' and is a member of the management of the company. His duties in particular are to deal with matters of the technical development as well as the commercial legal protection for patentable inventions. He is empowered to represent the company as prokurist."

b. Article 8, paragraph 1, states: "The employments start on September 1, 2000."

c. The date at the end of the agreement immediately above the signature blocks is, based on information and belief, the date the agreement was apparently executed (i.e., August 31, 2000). "Ottobrunn" is a suburb of Munich, Germany, where the headquarters of Fast Technology were located.

5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application of any patent issued thereon.

Respectfully submitted,



Stephen Harders

Date: 11/20/2007

ATTACHMENT I

Arbeitsvertrag

Zwischen

§ 7

FAST Technology GmbH
Otto-Hahn-Str. 24
Gewerbegebiet Riemerling
85521 Ottobrunn

- im folgenden auch als "Gesellschaft" bezeichnet -
und

Lutz May
3, The Grange
Enborne
Newbury,
RG146RJ
UK

- im folgenden auch als "Arbeitnehmer" bezeichnet -

wird folgender Arbeitsvertrag geschlossen:

§1 Tätigkeit und Aufgabengebiet

1. Herr May wird mit Wirkung vom 01.09.2000 als Prokurist eingestellt. Er erhält den Titel "Chief Technical Officer" und ist Mitglied der Geschäftsleitung der Gesellschaft. Ihm obliegen insbesondere Angelegenheiten der technischen Entwicklung sowie des gewerblichen Rechtsschutzes von schutzfähigen Erfindungen. Er wird ermächtigt, die Gesellschaft als Prokurist zu vertreten.

“REDACTED”

i^>>111W

~ ^Oeer.^TM*

+9 89 5427301S ,a_____

§2
Prokura

§3
Vergütung

“REDACTED”

§4
Urlaub

15-JUL-2004 11:01

Rte GLEICHENST./SCHNEIDER

+49 08 54273015 S.03/07

§5
Dienstwagen

§6
Arbeitsverhinderung

“REDACTED”

Verschwiegenheitspflicht, Herausgabepflicht

**§8 Vertragsdauer, Pflichten bei
Beendigung des Arbeitsverhältnisses**

1. Das Arbeitsverhältnis beginnt am 01.09.2000.

“REDACTED”

Wettbewerbsverbot, Diensterfmdungen

**§10
Vorteilsannahme**

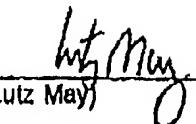
**§11
Schlulibestimmungen**

“REDACTED”

Ottobrunn, 31.08.2000

FAST Technology GmbH
durch:


(NeflBarlow, Geschäftsführer)


(Lutz May)

(Gomhard von Falkenhausen, Prokurst)

Anlage 1

Wettbewerbsvereinbarung

Zwischen

FAST Technology GmbH
Otto-Hahn-Str. 24
Gewerbegebiet Riemerling
85521 Ottobrunn

- im folgenden auch als "Gesellschaft" bezeichnet
und

3, The Grange
Enborne
Newbury,
RG146RJ

UK

- im folgenden auch als "Arbeitnehmer" bezeichnet <
wird folgende Wettbewerbsvereinbarung geschlossen:

“REDACTED”

15-JUL-2004 11:03

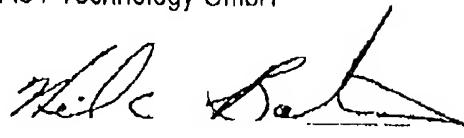
RRe GLEICHENST./SCHNEIDER

+49 89 54273015 S.07/07

“REDACTED”

Ottobrunn, 31.08.2000

FAST Technology GmbH



d
urch:

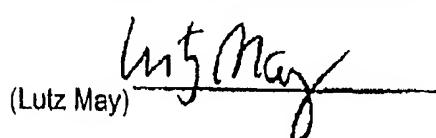
(Neil Barlovil)

Geschaftsführer)

(Lutz May)

(Gottjhard von Falkenhausen, Prokurst)

Herr May bestätigt, eine von beiden Parteien unterzeichnete Ausfertigung dieser Zusatzvereinbarung zum Arbeitsvertrag entgegengenommen zu haben.


(Lutz May)